IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.RAMKUMAR

WEDNESDAY, THE 5TH DECEMBER 2007 / 14TH AGRAHAYANA 1929

Crl.Rev.Pet.No. 4332 of 2007()

CRA.1063/2006 of SESSIONS COURT, TRIVANDRUM
CC.527/2005 of JUDL. MAGISTRATE OF FIRST CLASS COURT-II, TRIVANDRUM

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REVN. PETITIONER: REVISION PETITIONER/APPELLANT/ACCUSED

ARUN, S/O.SREEKANTAN NAIR,
AMBIKA NILAYAM, TC 36/1584(4),
SANGAMAM NAGAR, PERUMTHANNI WARD,
PETTAH VILLAGE.

BY ADV. SRI.M.SREEKUMAR

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY ADV. SRI. P. RAVEENDRA BABU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING COME UP FOR ADMISSION ON 05/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

V. RAMKUMAR , J

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CRL.R.P. NO. 4332 OF 2007

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Dated this the 5th day of December, 2007.

ORDER

The revision petitioner, who was the 1st accused in C.C. No. 527/2005 on the file of the Judicial First Class Magistrate-II, Thiruvananthapuram for an offence punishable under Section 394 IPC, challenges the conviction entered and the sentence passed concurrently by the courts below for the said offence.

2. The case of the prosecution can be summarised as follows:

On 12.06.2005 at about 8.30 p.m. near Ammankovil Thekketheruvu, Kottakkakam in Vanchiyoor village the three accused persons approached PW1, Sivakami in furtherance of their common intention of committing robbery. A1 and A2 came in a motor cycle bearing Registration No. KBV-947 and stopped it near PW1. A1 got down from the motor cycle and beat PW1 two or three times on the right side of her neck causing injuries and resulting in her falling down on the ground and snatched the gold chain which she was wearing and the accused Nos.1 and 2 joined A3 and decamped with the stolen chain. The accused have thereby committed an offence punishable under Section 394 r/w Section 34 IPC.

3. The prosecution altogether examined 8 witnesses as PWs 1 to 8 and got marked 7 documents as Exts.P1 to P7. The prosecution also got marked two material objects as MOs 1 and 2 which are a gold chain and a pair of slippers.

4. After the close of the prosecution evidence, the accused were questioned under Section 313(1)(b) Cr.P.C with regard to the incriminating circumstances appearing against them in the evidence for the prosecution. They denied those circumstances and maintained their innocence. They did not adduce any defence evidence.

5. The learned Magistrate after trial, as per judgment dated 11.09.2006 acquitted the 3rd accused but found the revision petitioner (A1) and A2 guilty of the offence and sentenced each of them to rigorous imprisonment for three years and to pay a fine of Rs. 1,000/- and on default to pay the fine, to suffer simple imprisonment for one month. On an appeal preferred by the revision petitioner as Crl. Appeal No.1063/2006 before the Sessions Court, Thiruvananthapuram, the learned Sessions Judge as per judgment dated 29.06.2007 confirmed the conviction entered and the sentence passed against the revision petitioner. Hence this revision.

6. The learned counsel appearing for the revision petitioner made the following submissions before me in support of the revision:-

The injury sustained by PW1, the de facto complainant is only abrasion in her neck which is not the result of any conduct attributable to the revision petitioner in voluntarily causing hurt while committing robbery. Hence even assuming that the act of chain snatching is proved against the revision petitioner the abrasion caused to the neck on account of chain snatching will not attract the offence punishable under Section 394 IPC. The alleged confession statement attributed to the revision petitioner and leading to the recovery of MO1, gold chain does not say that it was the revision petitioner who had concealed the gold chain. If so, the said statement fall short of the legal requirement of authorship of concealment. When more than one accused is alleged to have been involved in the occurrence, such recovery will not fall under Section 8 of the Evidence Act as well. Even assuming that the conviction recorded against the revision petitioner is liable to be confirmed, the sentence imposed on him is unduly harsh.

7. I am afraid I cannot agree with the above submissions. The evidence of PW1 shows that before snatching her chain the revision petitioner had beaten her. She had fallen down. By the time her

husband helped her to stand up, the gold chain which she was wearing was snatched and the chain was broken and the thali fell down and she was able to re-possess the thali. From the above narrative by PW1 it cannot be said that there was no act of voluntary causing hurt during the snatching of the chain so as to take the offence out of Section 394 IPC. Both the courts below have recorded the conviction after a careful evaluation of the oral and documentary evidence.

8. The argument raised on the authorship of the concealment is also without much merit. No doubt, in Ext.P6(a) confession statement, there is no indication that it was A1 who had secreted the gold chain in question. But then the evidence of the Investigating Officer will go to show that it was the 1st accused who led the police party to the place of concealment and handed over the MO which was seized under Ext.P6 Mahazar . When the conduct of A1 in leading the police party to the place of concealment and recovering the stolen property is proved, it amounts to a conduct falling under Section 8 of the Evidence Act and is clearly admissible as against A1. The conviction was thus rightly recorded against the revision petitioner and the same does not warrant interference at the hands of this Court.

9. The only other question which survives for consideration is the adequacy or otherwise of the sentence imposed on the revision petitioner. Admittedly he is involved in yet another crime of similar nature. Offences of this nature daringly committed in the heart of the city are now on the increase. Hence, penal servitude by way of incarceration for the said offence alone can serve as an effective disincentive . I am not inclined to hold that the sentence imposed on the revision petitioner is unduly harsh or excessive. The same is accordingly confirmed.

The revision is dismissed.

V. RAMKUMAR, JUDGE.

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